

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF PUERTO RICO  
3  
4 In Re: ) Docket No. 3:17-BK-3283 (LTS)  
5 )  
6 ) PROMESA Title III  
7 The Financial Oversight and )  
8 Management Board for )  
9 Puerto Rico, ) (Jointly Administered)  
10 )  
11 *as representative of* )  
12 )  
13 The Commonwealth of )  
14 Puerto Rico, *et al.* ) October 28, 2021  
15 )  
16 Debtors, )

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12 URGENT MOTION HEARING  
13 BEFORE THE HONORABLE U.S. MAGISTRATE JUDGE JUDITH GAIL DEIN  
14 UNITED STATES DISTRICT COURT JUDGE  
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16 APPEARANCES:

17 ALL PARTIES APPEARING BY VIDEOCONFERENCE

18 For The Commonwealth  
19 of Puerto Rico, *et al.*: Ms. Margaret A. Dale, PHV  
20 Mr. Michael T. Mervis, PHV  
21 Ms. Julia D. Alonzo, PHV

22 For Cantor-Katz  
23 Collateral Monitor,  
24 LLC: Ms. Taleah E. Jennings, PHV  
25 Mr. Thomas L. Mott, PHV

1 APPEARANCES, Continued:

2 For AmeriNational  
3 Community Services,  
4 LLC, as servicer for  
the GDB Debt Recovery  
Authority:

Mr. Arturo J. Garcia Sola, Esq.  
Mr. Nayuan Zouairabani Trinidad, Esq.

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24 Proceedings recorded by stenography. Transcript produced by  
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2	WITNESSES:	PAGE
3	None.	
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5	EXHIBITS:	
6	None.	
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1 San Juan, Puerto Rico

2 October 28, 2021

3 At or about 1:59 PM

4 \* \* \*

5 THE COURT: Good afternoon, everyone.

6 MS. JENNINGS: Good afternoon.

7 MS. DALE: Good afternoon, Your Honor.

8 THE COURT: All right. Everybody ready?

9 MR. GARCIA SOLA: Yes. Your Honor. Good  
10 afternoon.

11 THE COURT: Good afternoon.

12 Can we call the case?

13 MS. CARUSO: Yes, we can.

14 The United States District Court for the District of  
15 Puerto Rico is now in session. The Honorable Judge Dein  
16 presiding. Today is Thursday, October 28th, 2021. Case No.  
17 17-BK-3283, *In re: The Financial Oversight and Management*  
18 *Board for Puerto Rico, as representative of the Commonwealth*  
19 *of Puerto Rico*, will now be heard.

20 This is a general reminder that all persons granted  
21 remote access to the hearing are reminded of the general  
22 prohibition against photographing, recording, and  
23 rebroadcasting of court proceedings. Violation of these  
24 prohibitions may result in sanctions, including removal of  
25 Court-issued media credentials, restricted entry for future

1 | hearings, denial of entry for future hearings, or any other  
2 | sanctions deemed necessary by the Court.

3 | Will the parties please identify themselves for the  
4 | record?

5 | MS. JENNINGS: Good afternoon, Your Honor. Taleah  
6 | Jennings from Schulte Roth & Zabel. And excuse my voice. I  
7 | lost it this morning, but it's coming back. We represent  
8 | Cantor-Katz Collateral Manager, one of the DRA parties. And  
9 | I'm hear with my colleague, Thomas Mott.

10 | MR. GARCIA SOLA: Good afternoon, Your Honor, and  
11 | other members of the court. My name is Arturo Garcia Sola. I  
12 | appear together with Nayuan Zouairabani, and we represent  
13 | AmeriNational Community Services, the other DRA party.

14 | MS. DALE: Good afternoon, Your Honor. Margaret Dale  
15 | from Proskauer Rose for the Financial Oversight and Management  
16 | Board of Puerto Rico, and I'm with my colleagues, Michael  
17 | Mervis and Julia Alonzo.

18 | THE COURT: Thank you, everybody. I see that you've  
19 | allocated some time consistent with the orders. For those of  
20 | you who have lived discovery with me before, you kind of know  
21 | this is a little more interactive than that, but we can start  
22 | that way. But please know that I have been through  
23 | everything. I've been through the pleadings. I've been  
24 | through the deposition. So please focus your comments  
25 | accordingly.

1 All right. I guess, who's speaking for the moving  
2 parties?

3 MS. JENNINGS: Taleah Jennings, Your Honor.

4 THE COURT: Okay. And you'll keep it short, because  
5 you're losing your voice.

6 MS. JENNINGS: I know, unfortunately.

7 THE COURT: Go ahead.

8 MS. JENNINGS: Thank you, Your Honor. I understand  
9 you've read all of the papers. I think I just want to point  
10 out a few things. What's at issue here is the FOMB's failure  
11 to comply with the Court's Order regarding the 30(b)(6)  
12 Deposition Notice that was issued to the FOMB. Specifically,  
13 the Order expressly adopted certain of the parties'  
14 agreements, which are reflected in paragraphs 10 to 17 of the  
15 Joint Motion submitted by the parties.

16 One of those agreements provides, and I'll quote:  
17 The Oversight Board agrees that it shall be responsible for  
18 preparing the EY representative for the deposition in  
19 accordance with Rule 30(b)(6), including but not limited to  
20 with respect to each of the topics set forth in the deposition  
21 notice, which is defined there as the deposition notice issued  
22 to the FOMB.

23 Mr. Chepenik, when he testified, confirmed that the  
24 FOMB did not prepare him to testify. I don't think that  
25 that's under dispute, and it seems like it should be a pretty

1 easy ruling here.

2           The question is, and I think the only question that's  
3 relevant, is what is required to prepare a witness in  
4 connection with a 30(b)(6) deposition. 30(b)(6) itself says  
5 that a witness testifying pursuant to 30(b)(6) must testify  
6 about information known or reasonably available to the  
7 organization.

8           The FOMB's counsel told us, excuse me, that  
9 Ms. Natalie Jaresko was the most knowledgeable person at the  
10 FOMB regarding the topic set forth in the deposition notice.  
11 Yet the EY representative testified in response to every  
12 single one of the topics that he did not speak to anyone at  
13 the FOMB regarding the topics; he did not speak to  
14 Ms. Jaresko. She is clearly reasonably available to both the  
15 FOMB and to him.

16           He said he speaks to the FOMB representatives  
17 regularly. Ms. Jaresko he spoke to as recently as a day --  
18 the night before, or the day before his 30(b)(6) deposition.  
19 And there's simply no excuse to have not prepared him, with  
20 the FOMB's knowledge and access to FOMB representatives, to  
21 prepare to testify on the 30(b)(6) topics.

22           THE COURT: Okay. So let me interrupt you there,  
23 because I'm -- I understand your argument, but I am confused.  
24 It seems to me -- I'm looking at the subpoena notice. It says  
25 that, in accordance with 30(b)(6), EY must designate one or

1 more officers, directors, or other person who consent to  
2 testify on its behalf with respect to what is known or  
3 reasonably available to EY, as relates to work performed by EY  
4 for the FOMB concerning each of the topics of examination set  
5 forth in the attached Exhibit A.

6 I have to say, as I read this, to shortcut it, and  
7 you can try to talk me out of it, all right, but it was -- as  
8 I read it, the topics that have been designated have facts  
9 relating to the financial condition and things that were done  
10 in the finances. To the extent that there were financial  
11 information being sought in the deposition, it was the  
12 Oversight Board's position that the -- that Ernst & Young  
13 would have those facts as opposed to Ms. Jaresko, who probably  
14 doesn't know the details of the financial information.

15 And the Oversight Board then says, look, this is the  
16 person -- Ernst & Young is going to testify as to these facts  
17 in your topics, and we're bound by them, we're accepting those  
18 facts as being put forth by Ernst & Young.

19 MS. JENNINGS: Yes. However, the topics are not just  
20 facts, financial facts. For example, if you look at topic  
21 number two, it specifically says we wanted to know about any  
22 efforts undertaken by the FOMB to determine whether or not the  
23 Commonwealth had a balanced budget for years 2016 through the  
24 present.

25 EY limited -- said it wouldn't provide any testimony



1 regarding years 2016 and 2017, because it was not yet  
2 engaged.

3 THE COURT: Yes. But why does the subpoena say that  
4 they need to designate someone who's known or reasonably known  
5 to Ernst & Young as it relates to the work performed by Ernst  
6 & Young for the Oversight Board? Why does it say that? I  
7 mean, I didn't draft the notice.

8 MS. JENNINGS: No. And, actually, I didn't draft the  
9 specific notice either.

10 MR. GARCIA SOLA: I did.

11 MS. JENNINGS: Go ahead, Arturo.

12 MR. GARCIA SOLA: I can answer that, Your Honor.

13 THE COURT: Okay.

14 MR. GARCIA SOLA: Again, for the record, Arturo J.  
15 Garcia on behalf of AmeriNational Community Services. The  
16 reason why it says that, Your Honor, is that, first of all, we  
17 were not interested in serving a subpoena upon EY.

18 THE COURT: I'm sorry?

19 MR. GARCIA SOLA: We were not interested in serving a  
20 subpoena on EY. The only reason we served the subpoena upon  
21 EY is because the FOMB said, it's just a piece of paper. They  
22 need it for their own purposes. Please serve a subpoena on  
23 them. They just need it to be able to appear at the  
24 deposition. But they will testify to the topics on the notice  
25 that was served on the FOMB, and they will be prepared, as the

1 parties agreed, which agreement was documented in the joint  
2 motion and then in the Order.

3           So, again, there was no interest on our part to send  
4 a subpoena. The EY attorney asked that the language of the  
5 subpoena be changed to what is on the record, but we never  
6 understood that we were taking a deposition of an EY person --  
7 to the knowledge that that person had about the topics that we  
8 were going to be asking during deposition. We were always  
9 under the understanding that the FOMB was going to do what it  
10 said it would do, which is to prepare the person to testify to  
11 the facts that, you know, the FOMB was in possession of with  
12 respect to the -- to the topics.

13           Now, I have to say, there's another background piece  
14 of information that's relevant here, Your Honor.

15           THE COURT: But first address this language for me.

16           MR. GARCIA SOLA: Yes. Go ahead.

17           THE COURT: The language says that they need to come  
18 up with a witness who's going to testify as it relates to the  
19 work performed by Ernst & Young. And I also, I guess, need to  
20 understand, did you expect this deposition to give you facts  
21 about what was happening with these funds or not?

22           MR. GARCIA SOLA: We expected the deponent to give us  
23 facts and whatever other relevant information that the  
24 deponent would have that would bind the FOMB about the topics  
25 that were being asked as part of the deposition. Yes, we

1 expected that, Your Honor.

2 THE COURT: So as I understand it, if this witness  
3 testified, look, this is what this account held, that the  
4 Oversight Board is then bound by that testimony?

5 MR. GARCIA SOLA: Yes.

6 THE COURT: It's the financial information that was  
7 conducted by Ernst & Young --

8 MR. GARCIA SOLA: But, Your Honor, quite frankly, we  
9 were not interested in the information that the EY  
10 representative will give to us in response to the questions.  
11 We were interested in the information that the FOMB would  
12 provide to the witness in the process of preparing the witness  
13 for the deposition. That would then bind the FOMB, because it  
14 was information that was in the possession or control of the  
15 FOMB. That's the information we were asking for.

16 We served a 30(b)(6) notice on the FOMB. The FOMB on  
17 the eve of the fact deposition of Natalie Jaresko, which I  
18 took, Your Honor, sent us a letter saying that on that very  
19 day that we were going to depose her on other issues, the  
20 issues that she had been designated to appear on in the  
21 initial witness disclosure statements by the FOMB, so we were  
22 prepared to take her deposition on those issues, which had  
23 mostly to do, Your Honor, with the Plan confirmation process.

24 We were interested in getting information from the  
25 FOMB, as the 30(b)(6) deponent, on the topics that are in the

1 Notice of Deposition, Your Honor, so we served it. There was  
2 a lot of, you know, back and forth on the Notice of the  
3 deposition. Ultimately, on the day before we were to take the  
4 deposition of Natalie Jaresko, they sent us a letter saying,  
5 ah, by the way, tomorrow Ms. Jaresko will be available also to  
6 testify to the 30(b)(6) Deposition Notice topics.

7 We understood that it was very unfair that on the  
8 eve, the very eve when we were preparing for the deposition on  
9 other topics, Your Honor, that they would try to spring a  
10 change in circumstances for the deposition, so we disagreed  
11 with them. However, Your Honor, right after that deposition,  
12 Taleah, myself, and some others engaged in discussions with  
13 FOMB counsel, all of whom are present here in the hearing,  
14 Your Honor. I'm sure they'll say what they have to say. But  
15 we ultimately arrived at the agreement that's reflected in the  
16 joint motion that was filed with the Court, and then the Court  
17 so ordered it.

18 So we were expecting to have someone at the  
19 deposition not only that would have knowledge that EY would  
20 have communicated to that person, but also, and more  
21 particularly, Your Honor, information that the FOMB would have  
22 had about that -- those topics. And we didn't get any of  
23 that, Your Honor. Nothing of that.

24 MS. JENNINGS: And, Your Honor --

25 THE COURT: Allow me. This is -- I have really a

1 very straightforward question. I'm looking at the topics. It  
2 says, whether or not the Commonwealth had a balanced budget  
3 for each fiscal year. That's topic two. The witness  
4 testified there was no balanced budget, and he explained why.  
5 That's a fact.

6 I assume, based on the structure of this, that the  
7 Oversight Board is bound by that testimony, the facts of that  
8 testimony. I don't see anything in the topics that say, we  
9 want to know whether the Oversight Board thought there was a  
10 balanced budget. It says, we want to know what the facts are.

11 I'm assuming these are facts that relate to your  
12 expert deposition -- your expert testimony, who has opined on  
13 these subjects, so I don't see -- I'm missing the  
14 inappropriateness, I guess, if that's a word, of having Ernst  
15 & Young, who has the facts, who has the financial information  
16 that binds the Oversight Board, why that's not the appropriate  
17 witness in this arrangement, if you want the facts.

18 MR. GARCIA SOLA: Yeah. Well, Your Honor, I mean,  
19 the topic states, whether or not the Commonwealth had a  
20 balanced budget. Yes, that's what it states. But ultimately,  
21 at the end of the day, what we were trying to get at, Your  
22 Honor, was information related to whether or not a clawback, a  
23 constitutional clawback -- and I understand the FOMB's  
24 arguments about preemption and all of that. Okay. So let's  
25 set those aside. Those are not at issue here.

1                   Ultimately, we were inquiring about whether or not  
2   the clawback was validly exercised, and so we understood we  
3   had a right to inquire as to not only the balanced budget, but  
4   if it was not balanced, why wasn't it balanced; if it was  
5   balanced, why was it balanced; whether it was balanced at the  
6   beginning of the year, and then unbalanced at the end of the  
7   year; and the witness could not tell us any of that. Yes, he  
8   said. Well, you know, I understand that there was -- that the  
9   budget was balanced -- I'm sorry, it was unbalanced. That's  
10   what he ended up testifying, but we couldn't get any of the  
11   circumstances, Your Honor, that would help us to understand  
12   the implementation. And particularly, Your Honor, whether it  
13   was validly implemented pursuant to the Constitution of the  
14   United States -- I'm sorry, of Puerto Rico, were the  
15   Constitution of Puerto Rico not preempted.

16                   And as I'm sure you understand, we think that the  
17   Constitution of Puerto Rico is not preempted, notwithstanding  
18   whatever the FOMB wants to say about it. So it's just -- it's  
19   not just the balanced budget. It's the facts around the  
20   balanced budget: If it was not balanced, why was it not  
21   balanced; if it was balanced, why was it balanced; all of  
22   those things which we were entitled to ask, which we tried to  
23   ask, and we got no answers to.

24                   Yeah, the witness did say it was balanced. He also  
25   did say it was balanced, but, you know, the debt services had

1 | been paid. That's the only piece of information I recall. And  
2 | I have -- and I didn't read the transcript this morning, but  
3 | that's the only information I recall that the witness was able  
4 | to give us. But nothing around that -- those top -- the topic  
5 | of whether it was balanced, how it was balanced, whether it  
6 | was not, why wasn't it balanced, if it was at the beginning of  
7 | the year and then not at the end of the year, or vice versa,  
8 | we couldn't get any of that information from him.

9 |         And I think, Your Honor, that that's information that  
10 | someone like Natalie Jaresko, who FOMB's counsel has indicated  
11 | is the most knowledgeable person about the topics, would be  
12 | able to provide. And so she should have been able, had the  
13 | effort been undertaken, to prepare Mr. Chepenik to discuss  
14 | those issues and answer those questions that we were trying to  
15 | ask.

16 |         MS. JENNINGS: Yes. And, Your Honor, if I may add,  
17 | that is exactly why we entered into the joint motion and  
18 | submitted it to the Court. It was because, instead of taking  
19 | a member of the Oversight Board's deposition, and we were  
20 | going to EY, we agreed to do that so long as the FOMB agreed  
21 | to prepare that person, which means preparing them with all  
22 | knowledge reasonably available to it. And they specifically  
23 | did not do that.

24 |         They sat in some of the deposition preparation  
25 | sessions, but they didn't provide him any information. And it

1 was only counsel that sat in those preparation sessions. He  
2 intentionally did not prepare by speaking to anyone from FOMB.  
3 I mean, we did not get to obtain the deposition that we were  
4 seeking, and it was because they put this -- they put him,  
5 this EY representative in this seat instead of somebody who  
6 would have the additional knowledge that we wanted to get at.  
7 That's what they did.

8 And we put it in the Order, and the Order was entered  
9 into -- in the proposed Order, and the proposed Order was  
10 entered into by the Court. Had they not agreed to do that, we  
11 would have been in front of Your Honor earlier with our  
12 discovery dispute. We were prepared to come to you. And this  
13 was the resolution. This is what we agreed to.

14 THE COURT: Ms. Dale, do you want to respond?

15 MS. DALE: Yes, please.

16 Good afternoon, Your Honor. We are missing the  
17 inappropriateness of what the DRA parties are contending  
18 happened here as well. There was no intention, or I would say  
19 there was no effort, intention, we didn't seek to mislead  
20 them. We didn't seek to do some back room deal and do a bait  
21 and switch on the DRA parties.

22 I can go through the details, but you said you've  
23 read them, so I don't want to do that unless Your Honor has a  
24 specific issue that you'd like us to raise. The point here is  
25 that, as we said to them repeatedly, the topics are legal



1 topics by and large in respect of the clawback.

2           They have all of the facts that they need. Their  
3 expert witness had all of the facts that he needed to provide  
4 an opinion on these topics. When we look at this practically,  
5 we're trying to understand what facts they think they don't  
6 have or they couldn't get from the EY witness.

7           THE COURT: Well, I would --

8           MS. DALE: Mr. -- I'm sorry.

9           THE COURT: The facts that say, the efforts  
10 undertaken by the FOMB --

11           MS. DALE: Your Honor, may I add just on that? On  
12 the September 10th letter, which is attached to my declaration  
13 I believe as Exhibit 1, the same topics that were put -- not  
14 exactly the same wording, but very similar topics were in  
15 their request for production of documents.

16           And on September 10th, we wrote them a letter and  
17 said -- and I'm quoting from page 2 of that letter -- you  
18 know, your September 3 e-mail contends that "analyses as to  
19 whether the budget is balanced and whether there are  
20 sufficient revenues or surpluses directly relevant to the DRA  
21 parties' case," and therefore, quote, directs the Oversight  
22 Board to please produce documents responsive to requests 7  
23 through 9 as soon as possible.

24           We disagreed with that. We said, and I'm quoting  
25 from the letter again, as the Oversight Board and AAFAF

1 explained in our August 31 meet and confer, would the requests  
2 7 through 9 reflect a misunderstanding of the process by which  
3 the Commonwealth budgets are created. In developing the  
4 Commonwealth certified budget, the Oversight Board does not  
5 perform specific analyses regarding "whether or not the  
6 Commonwealth had a balanced budget;" "whether or not the  
7 available revenues of the Commonwealth were insufficient to  
8 meet the appropriations for the fiscal year;" or "the amount  
9 necessary to be retained for there to be sufficient revenues  
10 to meet the appropriations" as requested in your September 3  
11 e-mail.

12 We went on, but the point is, we don't have  
13 information to give them. We told them there are no analyses  
14 like this that the FOMB does. We told them, if you want some  
15 information regarding the topics of whether the Commonwealth  
16 had a balanced budget, whether or not the available revenues  
17 were insufficient to meet the appropriations, whether or not  
18 revenues of the Commonwealth were diverted, retained,  
19 reallocated or redirected, EY would have the information. EY  
20 was prepared. EY testified about that information.

21 So, if -- on their reply brief, we asked in our  
22 opposition, what facts don't you have that you think you need,  
23 and we didn't get anything back in reply as to what they think  
24 they need. They have everything they need. The clawback  
25 issues have been briefed extensively.

1           Mr. Garcia's statement here that they need  
2 information about whether the constitutional clawback was  
3 validly exercised or validly implemented all relate to legal  
4 issues, which are inappropriate for a 30(b)(6) witness in the  
5 first place. We made it clear that there was no more  
6 discoverable information.

7           Footnote four of the reply brief seems to indicate  
8 that the DRA parties believe they have what they need and they  
9 win on their legal argument. I think the Court will decide  
10 that, but I think that it's an acknowledgment that they don't  
11 really need anything else.

12           We're not quite sure why we're here. We were trying  
13 very hard to avoid a discovery -- you know, a discovery  
14 dispute that we needed to bring to the Court's attention. You  
15 read the Subpoena. Exhibit 6 to my Declaration -- sorry,  
16 Exhibit 10 to my Declaration has an exchange between  
17 Mr. Alejandro Cepeda Diaz and the EY in-house counsel -- no.  
18 I'm sorry. It's between Julia Alonzo and the DRA counsel,  
19 which says, we're not -- it's not a -- it won't be a  
20 deposition of the FOMB. It will be a deposition of EY. And  
21 then the subpoena was created that way as well.

22           It's very clear. I feel like we're going into like  
23 parol evidence on a breach of contract case. I'm happy to  
24 answer any questions the Court has, but I don't think -- we  
25 certainly didn't violate the Order. We certainly didn't do

1 anything intentionally to mislead anybody about it, and there  
2 are no more facts to give the DRA parties.

3 Thank you.

4 MS. JENNINGS: Your Honor, may I just respond?

5 THE COURT: Yes.

6 MS. JENNINGS: There's -- and I started at the  
7 beginning with this. The Order required the FOMB to prepare  
8 the EY witness. The response by the FOMB makes no reference  
9 to the Order in its 25 pages, not a single reference to the  
10 Order. They're focused on the subpoena, because the subpoena  
11 is something that EY's counsel said, I don't want to  
12 incorporate anything in this subpoena that you and the FOMB  
13 agreed to.

14 And we are not going against the EY and saying, you  
15 failed to comply with your obligations. What we are saying is  
16 that the FOMB failed to comply with its court-mandated  
17 obligations to prepare this witness to testify on these  
18 topics. And I have not heard them say anything about any  
19 efforts that they actually undertook to prepare this witness,  
20 which was required by the Order.

21 MS. DALE: Your Honor, Mr. Mervis, myself, Ms. Alonzo  
22 were in preparation meetings with the witness, with his  
23 counsel. We talked about these topics. As I've just said,  
24 there is nothing for him to speak to Natalie Jaresko or  
25 anybody else at the FOMB to get at these legal issues that

1 they're seeking to relitigate or spend time on --

2 MS. JENNINGS: Your Honor --

3 MS. DALE: I'm not --

4 MS. JENNINGS: Your Honor, if I just -- the testimony  
5 by the witness says that Proskauer did not provide him any  
6 information regarding these topics.

7 THE COURT: So, actually, the way I read the  
8 deposition was that there was a lot of testimony -- it seemed  
9 to me that he was prepared to speak about things that Ernst &  
10 Young did beyond his personal involvement, though the  
11 questions at some point seemed to shift entirely to him  
12 personally, you know. And I'm not quite sure why, but they  
13 did.

14 I certainly am not privy to the meetings that went  
15 on, though he did testify that he prepared; he prepared with  
16 counsel; he prepared with his -- Ernst & Young's counsel; he  
17 prepared with the Oversight's counsel. I would assume that to  
18 prepare in accordance with 30(b)(6) says, you can't rely  
19 solely on your own knowledge; you need to rely on the  
20 knowledge of the entity. And he did testify that he spoke  
21 with a number of other people at Ernst & Young to get  
22 information about the work, the scope of the work that Ernst &  
23 Young did, and the facts. That's how I read it.

24 I would say I have no doubt that you both truly  
25 believed you were performing what you thought your agreement

1 was. I think -- I think there was a misunderstanding, and I  
2 think, for the DRA parties, I'm stuck on the language of the  
3 subpoena. I'm just stuck on why it says that they need to  
4 provide a witness who knows what Ernst & Young did, and beyond  
5 that, so that's -- I don't find a violation of the Court  
6 Order. I think the Court Order was not as clear as it should  
7 have been.

8 I understand what -- I think it's very clear that the  
9 Oversight Board is not designating Ernst & Young as its 30(b)  
10 witness. I think it's very clear that Ernst & Young -- that  
11 the Oversight Board is binding itself to whatever Ernst &  
12 Young says. That I think is clear.

13 I think it's less clear as to what -- the scope of  
14 the preparation, what the role was to be in preparing pursuant  
15 to 30(b)(6). I think that then becomes clarified in the  
16 subpoena, which says, this is who you have to produce, and the  
17 person has to know about what Ernst & Young did.

18 Beyond that, though, I don't understand, if you get  
19 the facts from these topics, why do you need more? Like, why  
20 do you need what -- the steps the Oversight Board did? Isn't  
21 your argument, this is where the money went; it shouldn't have  
22 gone there; legally it should have gone to us? I mean,  
23 fundamentally isn't that what your arguments are?

24 And I guess I share the inquiry on what other facts  
25 from the Oversight Board's personal knowledge -- how that

1 affects your case.

2 MR. GARCIA SOLA: If I may answer that, Your Honor?

3 THE COURT: Yes.

4 MR. GARCIA SOLA: Okay. Again, for the record,  
5 Arturo Garcia on behalf of AmeriNational Community Services.

6 You touched upon one of the topics in the -- in the  
7 Notice. That was number two, with respect to balanced budget,  
8 and we discussed that already. However, Your Honor, if you go  
9 to -- if you go to the other topics --

10 THE COURT: I mean, I thought the witness testified,  
11 he said, look, if they had paid all the debt service they  
12 needed to pay, there wasn't enough money; and then, if they  
13 had paid all the bills that they needed to pay, there wasn't  
14 enough money. I mean, that's what he testified to.

15 MR. GARCIA SOLA: If you go to the other topics --  
16 I'm not very techy, Your Honor, and I'm trying to get -- I  
17 apologize.

18 THE COURT: Way too many papers and way too many  
19 screens.

20 MR. GARCIA SOLA: Yes. That's exactly what's  
21 happening here to me. So my colleague is trying to get them  
22 for me. He's far more techy, and he appears to be having the  
23 same issues with me --

24 THE COURT: You need someone who's 12 years old.

25 MR. GARCIA SOLA: Yes.

1 THE COURT: Do we have any 12-year-olds here who can  
2 work all these screens --

3 MR. GARCIA SOLA: I have a grandson who is only two.  
4 He probably would be able to help me, but he's not here today.

5 MR. ZOUAIRABANI TRINIDAD: We do, Your Honor -- he  
6 touched something, and if you'll give me a sec --

7 THE COURT: But what's the point?

8 MR. GARCIA SOLA: So what I wanted to do is go into  
9 some of the other topics. Okay. Here they are.

10 So some of the other topics are broader in scope than  
11 the balanced budget topic, because -- for instance, let's take  
12 topic number four. And the witness clearly didn't have any  
13 information. Nobody provided any information to him on this  
14 topic, this topic being whether or not any of the revenues of  
15 the Commonwealth were diverted, retained, reallocated or  
16 redirected in order for there to be sufficient available  
17 revenue.

18 Now, in response to this, in order to get information  
19 on this particular topic, we understood that we were entitled  
20 to ask questions about if they were diverted, how much they  
21 were diverted, where were they diverted to, why were they  
22 diverted to those particular entities, and the same and so  
23 forth for all the other issues there, which, you know, include  
24 retained, reallocated or redirected.

25 The witness testified that he had no knowledge of



1 that. So either EY didn't have any knowledge that that was  
2 transmitted to him, or the witness himself didn't have any  
3 knowledge, even though the witness had been working with the  
4 FOMB for a long time before the -- before the deposition, and  
5 particularly on financial issues, such as these types of  
6 issues, you know, budgets and the like. But he was not able  
7 to provide any or much information at all with respect to  
8 question number four.

9 The same goes for question number five, which talks  
10 about amounts of clawback funds that were disbursed for uses  
11 other than the payment of General Obligation debt. So he did  
12 know that GO debt had not been paid since 2016; but he didn't  
13 know whether the clawback funds had been used to pay any other  
14 expenses, and, if so, what other expenses.

15 And frankly, Your Honor, in order to be able to  
16 determine or at least make the analysis whether the -- whether  
17 the clawback had been implemented in the correct way, we had a  
18 right to have all of that information. And if not in EY's  
19 knowledge, then for sure someone like Natalie Jaresko, the  
20 executive director of the Board, should have known that  
21 information.

22 And so clearly the deponent that was designated to  
23 answer on behalf of EY, but to be able to join the FOMB, based  
24 on the FOMB's representation and commitment to prepare the  
25 witness to be able to speak to the information that was in the

1 knowledge of the FOMB, was not at the deposition. I didn't  
2 have that witness. I didn't have Natalie Jaresko, nor anybody  
3 else. And the witness did not speak with Natalie Jaresko, nor  
4 anybody else.

5 And the same goes for topic number six, Your Honor,  
6 which talks about Act 30-31 incremental revenues. As you know  
7 or may know, I'm sure you know, that is a very important issue  
8 relevant to the DRA parties. It's an issue that's been  
9 briefed in many -- in many documents that we filed with the  
10 Court.

11 We wanted to ask the witness if he had any  
12 information about the Act 30-31 incrementals, and in  
13 particular whether any of those revenues or any other revenues  
14 of HTA were again diverted, retained, reallocated or  
15 redirected. We came out of the deposition, Your Honor, with  
16 nothing, with zip, because the witness was not prepared to  
17 answer those questions, had no knowledge, either because EY  
18 didn't have the knowledge, he personally didn't have the  
19 knowledge, and nobody at FOMB sat down with the witness to do  
20 what we were told that they would do, which is prepare the  
21 witness with the information that the FOMB had to be able to  
22 testify at the deposition based on knowledge provided to him  
23 by their position.

24 Because, you know, 30(b)(6) depositions can be of  
25 anybody. It doesn't -- they don't have to be -- it didn't

1 have to be of someone that was at the FOMB or any member or  
2 staff of the FOMB. But they had an obligation, and they  
3 agreed to comply with the obligation to prepare the witness,  
4 which clearly they did not.

5 MS. JENNINGS: They know that that is the only reason  
6 we agreed to it. And I appreciate Your Honor saying that  
7 everyone probably thinks they complied. I disagree. In my  
8 own opinion, I was part of -- I was the primary person who  
9 discussed with Ms. Dale the process here. In the  
10 meet-and-confer, she said, it's just a piece of paper; what  
11 are you guys not doing; you're going to get the same exact  
12 thing; it's just going to be a different body sitting in the  
13 seat.

14 And then her and I had a follow-up conversation on  
15 the phone, and it's unfortunate that she is -- I'll just say,  
16 I have represented to the Court exactly what was represented  
17 and discussed during that phone call. And it was that they  
18 would prepare this person to speak just as if it was a member  
19 of the Board sitting for the deposition. That's why we agreed  
20 to it, and it's the only reason we agreed to this process.

21 And I believe, truly, that Ms. Dale, maybe her  
22 partners, maybe not, but Ms. Dale certainly knows that.

23 MS. DALE: I am totally -- I'm totally offended by  
24 this.

25 MS. JENNINGS: And -- and --

1 THE COURT: Ms. Jennings, I would like you to stop  
2 this --

3 MS. DALE: Yes. Could you just stop?

4 THE COURT: -- because I need to say it would have  
5 been actually much easier if we had had the original motion --

6 MS. DALE: Yes.

7 THE COURT: -- because this topic is problematic.  
8 Okay. And I think that I find it unfortunate that you didn't  
9 communicate equally here or have a -- the exact understanding  
10 of what was going on, but I still, Ms. Jennings, with all due  
11 respect, don't understand what you thought this deposition  
12 was.

13 I mean, I read it. I didn't see anybody showing  
14 Ernst & Young a financial statement that said, where did this  
15 money come from or where does this money go. I mean, this was  
16 a very general deposition that, to the extent that you have a  
17 real issue with where money went -- first of all, I believe  
18 one of your experts has already detailed extensively the HTA  
19 funds, right, the Act 30 and 31 funds. Those have been shaped  
20 -- those have been traced. I don't know what other funds have  
21 been traced or not. I -- my ignorance of all of your exhibits  
22 is going to be overwhelming, but they did get filed recently,  
23 so -- but you have that -- that's not what this deposition  
24 was.

25 I mean, I'm not quite sure -- the legal fight is

1 working its way through the court. The significance of how  
2 this money was spent is working its way through the court in  
3 connection with your various pending matters. The facts,  
4 though, I -- I'm still not convinced that there was anything  
5 else to give you. To the extent that you wanted facts about  
6 what happened to the money, Ernst & Young appears to have been  
7 the right entity, and the Board is bound by that.

8 To the extent that you want a separate statement by  
9 the Oversight Board on what they knew, I don't think further  
10 deposition testimony -- I don't understand the significance of  
11 it, and you haven't convinced me that we need any more  
12 depositions on that point. If you had had Ms. Jaresko, it  
13 seems to me she would say Ernst & Young did the financial  
14 calculations and it's in the papers.

15 MR. ZOUAIRABANI TRINIDAD: Your Honor, if I may?

16 MR. GARCIA SOLA: So, Your Honor, if I may?

17 MS. DALE: May I just respond, Your Honor?

18 THE COURT: Let Mr. Garcia, please, first.

19 MR. GARCIA SOLA: Yes, Your Honor. Let me just say  
20 something. First of all, the question -- your question is a  
21 very fair question, by the way, but the situation we're in is  
22 that we were at that point in time in discovery, in the middle  
23 of hectic discovery for the Plan confirmation processes.  
24 Unfortunately, there was a very unbalanced playing field. The  
25 information was in the domain of the FOMB or the government.

1 It was not in the -- in the hands or in the knowledge of the  
2 DRA parties.

3 We were -- what we were trying to do through the  
4 30(b)(6) notice, which originally went to the FOMB, was to  
5 balance the playing field somewhat. And when we obtained the  
6 commitment by the FOMB, which is reflected in paragraph 15 of  
7 the joint motion, which reads, and I quote, "additionally, the  
8 Oversight Board agrees that it shall be responsible for  
9 preparing the EY representative for the deposition in  
10 accordance with Rule 30(b)(6), including but not limited to  
11 with respect to each of the topics set forth in deposition  
12 notice, except for topic number one," which we did not get  
13 into topic number one.

14 But the fact of the matter is, Your Honor, that the  
15 witness showed no facts, was able to testify as to no facts on  
16 most of the -- of the topics that were the object of the  
17 Deposition Subpoena and the 30(b)(6) Notice. He specifically  
18 said, no, I do not know; no, I didn't speak with anybody from  
19 the FOMB; no, I didn't get any information from the FOMB; and  
20 no, I wasn't prepared by anybody from the FOMB.

21 As Ms. Jennings said before, he went so far as to  
22 say, I meet regularly with folks from the FOMB, including  
23 Natalie Jaresko the night before, the day before; and still he  
24 didn't ask Natalie Jaresko, he didn't -- not even -- as far as  
25 I know, he did not even tell her that night that he was going

1 to be deposed the next day.

2 THE COURT: What's your understanding, just because  
3 you're living it -- what's your understanding of Ernst &  
4 Young's role, vis-a-vis the finances, and the Oversight  
5 Board's? Do you think Ms. Jaresko has done the calculations  
6 and that Ernst & Young should have asked her for the  
7 calculations? Is that what you think?

8 MR. GARCIA SOLA: Well, first of all, what I know is  
9 what was stated to us by FOMB's counsel, which is that  
10 Ms. Jaresko is the person most knowledgeable about all the  
11 topics in the deposition notice. That's the first thing I  
12 know.

13 Second, you asked me about EY's role. He testified  
14 during the deposition to his various roles, but among those  
15 roles were working with the FOMB on the fiscal plans and  
16 budgets. Evidently he works on those documents. But there  
17 has to have been someone on the side of the FOMB working  
18 alongside of him. Whether that's Ms. Jaresko or not, I do not  
19 know.

20 If I were to take as true the statement by the FOMB  
21 counsel, she was the person most knowledgeable, then she maybe  
22 would have been the person knowledgeable about each of the  
23 topics. I don't know that, because I didn't ask. I didn't  
24 have an opportunity to ask her. But somebody from the FOMB  
25 would have been the counterpart of Mr. Chepenik in doing the

1 work he was doing on the budgets and on the -- and on the  
2 fiscal plans, which I think would have been the person, had we  
3 gone with the FOMB instead of the EY person. Because we  
4 always wanted a FOMB person, but we didn't get anybody from  
5 the FOMB, because instead they took us in the direction of EY  
6 and said they would prepare the person.

7 And so, Your Honor, again, we were trying to balance  
8 the playing field. It's already -- it's a hugely unbalanced  
9 playing field. And when we start playing games or  
10 gamesmanship, like the one that I think, respectfully -- and I  
11 respect my colleagues from Proskauer, by the way, very much,  
12 very much, but on the other side, what I see is gamesmanship,  
13 Your Honor.

14 And we could not get the information that we should  
15 have been able to get had a witness from the FOMB either been  
16 deposed, or had someone from the FOMB prepared the EY witness  
17 the way they committed to do.

18 MR. ZOUAIRABANI TRINIDAD: Your Honor, if I may, I  
19 would like to add a point.

20 THE COURT: Just one more question, and then I'll let  
21 you speak.

22 Did your experts have access to the documents in the  
23 document room?

24 MR. ZOUAIRABANI TRINIDAD: Your Honor, actually,  
25 that's exactly what I wanted to address, so thank you for



1 doing the question. For the record, Attorney Nayuan  
2 Zouairabani for AmeriNational Community Services, LLC, as one  
3 of the DRA parties.

4 The reason I say that I'm glad that you asked the  
5 question, if you look at the expert report of Douglas  
6 Brickley, which was attached as part of the Declaration of  
7 Margaret Dale in connection to this issue, I would like to  
8 point you out to his Exhibit B. In part of his report, and  
9 when they -- actually, FOMB took his deposition. They asked  
10 him in terms of how complete it was. He said it was complete  
11 based on the information that was made available to him, but  
12 that he would have liked to have looked at more information to  
13 further strengthen his analysis.

14 And the Exhibit B is a list that he prepared of  
15 financial information that he would have liked to have had  
16 access to, to review. And if you compare that Exhibit B to  
17 the Exhibit A, which is a document that was available to him  
18 to review, Exhibit B far outweighs Exhibit A.

19 So it goes back to the point that my fellow colleague  
20 Arturo Garcia -- Arturo Garcia was mentioning with regard to  
21 the even playing field. The financial information with regard  
22 to this particular matter, we'll call it the whole clawback  
23 matter, really the dice is loaded towards the government  
24 parties who have possession of the information, if it exists.  
25 And the only trickle information that we've been able to

1 obtain leads us to the expert report that Mr. Brickley put  
2 out. But there has to be much more information.

3 If you look at the constitutional requirements, it's  
4 not just, oh, there's not enough money, I'll just go ahead and  
5 pay. There are two elements to that. The first one is  
6 activation, which is whether there are sufficient revenues to  
7 satisfy the appropriations, and that goes back to the concept  
8 of balanced budget as well. Then the next aspect of it is --  
9 once it's activated, it's distribution and disbursement, and  
10 there's a priority order there.

11 Mr. Brickley made his analysis based on the scant  
12 information that's been publicly available and that has been  
13 submitted to us by the government parties, both AAFAF and  
14 FOMB, as part of the discovery dispute. The playing field is  
15 not even. We're making lemonade out of lemons, Your Honor.

16 The whole idea of the 30(b)(6) deposition was to get  
17 as much information as possible with regard to this particular  
18 topic. When we entered into the agreement that was ultimately  
19 contained in the Order, the FOMB mentioned that EY would be  
20 the best person with regard to this topic. That's who they  
21 proposed. But the idea was we always wanted to take the  
22 30(b)(6) deposition of the FOMB.

23 Now, by saying that he was not prepared, he was not  
24 able to make the -- answer the questions under the agreement.  
25 FOMB did not prepare him. According to his testimony, he did

1 not speak with personnel from Proskauer who were able to help  
2 him out.

3 Specifically, points four, five and six, as  
4 Mr. Garcia pointed out, we feel like it's bait and switch,  
5 Your Honor. We have a reason to feel suspicious about this,  
6 and our experts definitely would have benefited from this  
7 information.

8 THE COURT: Anybody else -- Ms. Dale, do you want to  
9 respond?

10 MS. DALE: Just a few things, Your Honor.

11 With respect to Ms. Jaresko, we had served some  
12 responses and objections to the Notice of Deposition. We had  
13 indicated that EY would be the most appropriate party to  
14 respond, and they would need a subpoena. And that was  
15 rejected. And so the -- so then we said, okay, we don't want  
16 to have a dispute about this. We'll designate Ms. Jaresko.  
17 She was going on for deposition in her individual capacity the  
18 next day.

19 And I think that's the e-mail that they're referring  
20 to as "the most knowledgeable person." I don't think -- I'm  
21 not sure who sent that, but it was from our side, and they  
22 rejected that. Mr. Garcia didn't have enough time to prepare,  
23 and so the -- after Ms. Jaresko's deposition was when we  
24 started the negotiations over the subpoena. So that's where  
25 the most knowledgeable person came in.

1 I stand on my position about the fact that we don't  
2 have additional facts on these topics. We told them that on  
3 September 10th. And I also reject the contention that they  
4 didn't get information that they wanted from this witness.  
5 Perhaps they didn't ask certain questions of this witness;  
6 but, for example, Mr. Garcia said they asked about topic four,  
7 and he had no information. They asked about topic five, and  
8 he had no information.

9 In his deposition at pages -- topic four was referred  
10 to starting at page 157 of his deposition, and then pages 159  
11 to 165, there was discussions of the topic of clawback, either  
12 the -- you know, diverted, retained clawback, these terms were  
13 discussed. And at one point, this is page 161, line around  
14 13, the witness says, and it sort of mischaracterizes the  
15 budgeting process, which is what I'm familiar with. And the  
16 budgeting process takes the revenues from the fiscal plan,  
17 sets a revenue envelope, and that revenue envelope is used to  
18 establish the spending parameters that the government uses to  
19 set its budget that the Board ultimately certifies.

20 There's no -- in the context of this question,  
21 there's no -- there's no way to differentiate between the  
22 different revenues that are used for those expenditures, and,  
23 therefore, to know what funds are redirected, retained,  
24 reallocated, or redirected. The revenue envelope is just  
25 pulled from the fiscal plan revenue parameters. That's why

1 it's hard for me to answer with more specificity for you.

2 Topic five, he goes on, pages 167 to 169, regarding  
3 topic five, the clawback funds, and if you'll just indulge me  
4 for a moment. Question, line 5, page 167: I'll ask you, do  
5 you have any knowledge of whether the clawback funds as we  
6 identified them just prior to going into the break have been  
7 used to pay GO debt service?

8 Answer: From fiscal '18 onward, question mark?

9 That's correct.

10 I'm not aware of the clawback funds, or any funds for  
11 that matter, being used to pay GO debt service.

12 During that time period -- sorry. Question: During  
13 that time period, has any GO debt service been paid, to your  
14 knowledge?

15 Answer: The only GO debt service that I believe  
16 might have been paid would have been insured debt service.

17 And it goes on. He's giving them the facts as he  
18 knows them. There are no other facts from the FOMB.

19 We did not violate the Order.

20 THE COURT: All right. I do appreciate the passion  
21 with which everybody has staked out their positions, but as I  
22 see it, we really do have a legal dispute here that is being  
23 carried out at the courts as this -- that's based on your  
24 different legal positions that are being addressed in the  
25 motions to dismiss the administrative claim.

1           Again, as I read it, the Oversight Board is bound by  
2     the testimony of Ernst & Young, but Ernst & Young was not  
3     officially the 30(b)(6) representative. Ernst & Young was the  
4     entity with the most knowledge about the actual financial  
5     condition and use of revenues.

6           I have read the reports and the Exhibit A and Exhibit  
7     B. The Exhibit B, in my mind, was -- of the expert's report  
8     was a wish list, you know, but it -- the basic numbers that it  
9     needed was taken from the publicly available fiscal plans and  
10    other reports. I don't see that the Oversight Board is  
11    challenging those numbers. Those numbers are what they are.

12           The significance of those numbers will be decided in  
13    the context of the law, or in a confirmation hearing, or  
14    wherever it's going to be played out. I don't see that there  
15    was -- I will say that I don't think that the Order was as  
16    clear as it should have -- you know, adopting your phrasing,  
17    was not as clear as it should have been. I don't see --  
18    you've not explained to me what additional facts the Oversight  
19    Board would have had.

20           I'm convinced by the Oversight Board's responses to  
21    the document requests and other discovery requests that the  
22    Oversight Board does not have facts relating to the treatment  
23    of those funds, separate and apart what -- from what Ernst &  
24    Young provided in response to the deposition.

25           So the motion to compel is denied. I guess it's a

1 motion to compel. I don't even know what it is. I guess a  
2 motion to compel, which I do think, frankly, should have been  
3 brought as part of the proceedings that have been set out for  
4 expedited resolution of these disputes.

5 MR. GARCIA SOLA: Thank you, Your Honor. I hear you,  
6 and I respect it. Can I just say one more thing, perhaps in  
7 reconsideration? Yes, there is a lot --

8 THE COURT: I don't even get a minute? I don't even  
9 -- do I have to reconsider? Go ahead.

10 MR. GARCIA SOLA: Just one thing, Your Honor. One of  
11 the -- one of the factual matters that we were hoping to get,  
12 which I believe was something that the FOMB should have had  
13 knowledge of, or be able to get the information, is where the  
14 revenues went, Your Honor. Either the Act 30 or 31 revenues,  
15 or other revenues belonging to the -- to the HTA. We were not  
16 able to get any of that information. The witness clearly  
17 didn't know that information. He simply kept referring to the  
18 revenue letter.

19 And I understand that, Your Honor, but there are many  
20 sources of revenues that go into the number that ultimately is  
21 included in the revenue letter. And we understand, Your  
22 Honor, that we were entitled to get information and discovery  
23 on where those revenues were going, not just that they were  
24 included in some revenue letter that would then be part of one  
25 side of the budget of the Government of Puerto Rico.

1                   And by the way, Your Honor, I've been working with  
2 the Government of Puerto Rico for many years in the Fortuno  
3 administration years, where there was already a little bit of  
4 a crisis, or at least the front runner of the crisis,  
5 financial crisis. I worked with the government in its own  
6 fiscal board at the time. So I know how a Government of  
7 Puerto Rico budget is prepared. I do not have to be, you  
8 know, taught or told how it is prepared.

9                   There are some issues that are somewhat different,  
10 because there's now a fiscal board. But the revenues, the  
11 revenues are the revenues. And yes, there's a revenue letter,  
12 and the Puerto Rico legislature takes that revenue letter to  
13 prepare its budget. But underlying that revenue letter,  
14 there's a whole host of sources of revenue, including the Act  
15 30-31 incremental revenues or the Act 30-31 revenues that we  
16 understand we had a right to at least trace.

17                   We were able to trace some of those, Your Honor, for  
18 a particular period, thanks in part to the work that was done  
19 by one of our experts, a forensic accountant, but we're still  
20 mostly in the dark, Your Honor, as to where the totality of  
21 those funds went to in an exercise of the clawback. The  
22 clawback doesn't just say, you need to pay GO debt. It says  
23 other things, and then it takes -- it takes the reader to the  
24 OMB enabling statute, which then has the waterfall.

25                   We couldn't get any of that, Your Honor, which I



1 think was fair game in trying to get information on the  
2 clawback and how it was implemented. So if anything, Your  
3 Honor, and I -- as I said, you know, I respect the court  
4 system too much, and I respect you a lot, just as I do respect  
5 my colleagues from Proskauer, you know. We feel that,  
6 unfortunately, we were not able to get the testimony that we  
7 should have been able to get had we gone along with the  
8 deposition of the FOMB, and, instead, were sidetracked to EY.

9 And if anything, Your Honor, I'm asking you to at  
10 least consider that aspect of our request, and let us inquire  
11 further as to the sources of revenue and where those revenues  
12 went.

13 THE COURT: I'm just surprised. I would think that  
14 your expert would have had access to all the financial  
15 information. Is that not right? I mean, it seemed to me that  
16 Ms. Martinez was able to trace certain funds, and I know that  
17 the document depository has backup financial information.

18 MR. GARCIA SOLA: I will ask my colleague, Nayuan  
19 Zouairabani, to answer that question, Your Honor.

20 MR. ZOUAIRABANI TRINIDAD: Yes. For the record,  
21 Nayuan Zouairabani again for AmeriNat.

22 So our expert, Lizette Martinez, had access to  
23 documents that were a part of the revenue bond adversary, and  
24 the lift stay, the analogous lift stay proceedings. And the  
25 revenues that she and her team were tracing were aimed

1 directly, specifically as to some clawback funds from HTA. So  
2 not all of the revenue sources, and specifically, the Act  
3 30-31 incremental revenues.

4 So even though she had access to that information,  
5 she did not have access to all of the information, just as a  
6 matter of background. Some of the issues -- some of the  
7 depositions that we were going to take had to do with AAFAF  
8 with regard to the flow of funds. Specifically, the witness  
9 in the previous proceedings had been Mr. Timothy Ahlberg, and  
10 we were in discussions with regard to how to manage that  
11 situation.

12 So going back to the whole question, now, HTA is just  
13 one bucket of the clawback funds under the Puerto Rico  
14 Constitution. There's other buckets of clawback funds. You  
15 have CCDA, you have PRIFA, and the list goes on. So in order  
16 to make an assessment as to whether the clawback was  
17 implemented according to the Puerto Rico Constitution, the  
18 undertaking would have required far more revenue sources than  
19 putting information that we had available. And the reason we  
20 had it available was because it was part of the prior  
21 proceedings.

22 Bear in mind, Your Honor, the DRA, not up until we  
23 got close to confirmation, did not have an opportunity to do  
24 discovery at those prior proceedings. We had limited  
25 participation, just to receive the information that was being

1 remitted.

2           So with that in mind, Your Honor, we were working  
3 with the information that we had, but we did not have all of  
4 the information necessary, specifically as it relates to the  
5 exercise, total -- in terms of whether the clawback would be  
6 illegally activated, and whether the funds were distributed  
7 pursuant to the clawback.

8           MR. GARCIA SOLA: So the short answer, Your Honor, is  
9 no, we did not have -- we did not have all the information  
10 that should have been available. It was not all provided.

11           MS. DALE: Your Honor, it's Margaret Dale again.  
12 We're far afield from where we were, but the witness testified  
13 about revenue. He testified about the con -- I think it's  
14 called conditionally allocable revenues, which are these  
15 clawback funds, page 164 and 165. This was part of what I was  
16 reading from before.

17           He says, I'm -- the question at line 20 is, I asked  
18 what your understanding was of the clawback, referred to the  
19 conditionally allocable funds.

20           Answer: So my understanding is it refers to those  
21 revenues in the fiscal plan, those particular revenue streams.

22           And then there's another question. Are -- and are  
23 some of those revenue based on the discussion we had before  
24 related to some of the taxes that were in Act 30 and 31, like  
25 cigarette tax, petroleum tax, gasoline tax, and the rest?

1                   And answer: The revenues under Act 30 and 31 I do  
2 believe are included as conditionally allocable revenues in  
3 the fiscal plan, yes.

4                   Question: So to the extent -- they would have been  
5 clawback funds, correct?

6                   Answer: Yes. I believe those fall into the category  
7 of clawback funds.

8                   We take a break. We come back. And then the  
9 questions go on. I'm sorry. I just lost my reference. Hold  
10 on one moment. At one point -- here, it's on page 169.  
11 Mr. Chepenik at line 5 is answering the question.

12                   The question, I'll read it. I'm sorry I'm taking up  
13 so much time. So would that include -- you don't know whether  
14 any of the clawback funds would have been transferred back to  
15 HTA?

16                   And the answer is: I'm not aware of any instance of  
17 clawback funds being used for any purpose other than one  
18 special resolution in 2019. Again, I think I explained this  
19 earlier. It sort of mischaracterizes the process, the  
20 budgeting process. The revenue envelope is set from revenues  
21 drawn from the fiscal plan. It doesn't distinguish in this  
22 budget year, for instance, that revenue letter does not  
23 diversify what funds are being used. It's a pool of cash, a  
24 pool of revenue that can be used to fund expenditures.

25                   He testified about these issues, Your Honor.

1           THE COURT: And it seems to me that what you're  
2 asking for is a further refinement of perhaps the amount of  
3 your claim, not necessarily the merits of what you're entitled  
4 to, so I -- you have enough information, it seems to me, to  
5 have -- to put forth your legal arguments. And I believe that  
6 this witness answered the factual questions that were asked.  
7 I think it went a little south somewhere to become his  
8 personal involvement and not the Ernst & Young involvement,  
9 but I don't see that it's significant.

10           So I have reconsidered. I thank you, but I'm not  
11 changing my mind. And if at some point at the claims stage,  
12 if you find that you're missing some facts, it seems that at  
13 that point you can renew a request for some specific factual  
14 information. But I don't think that it's -- you haven't  
15 convinced me that it's worth reopening discovery at this  
16 point. And I find that you have sufficient information to put  
17 forth all of your -- the claims that are at issue.

18           And your experts have provided their reports, and I  
19 don't see actually -- it's not like a factual dispute over the  
20 experts either. It's sort of the consequences of -- I don't  
21 see this as a battle -- I don't see a head-on-head battle of  
22 experts here. I think we have a more fundamental question as  
23 to the legal significance of things that happened. And so I  
24 have re-thought it, but you're stuck with my answer.

25           And I just briefly -- on the break, on the attorney

1 -- my position is, and just so you know, I don't ban all  
2 conversations during breaks. I don't see anything here that  
3 indicates in any way that there was leading of the witness.  
4 That I am thoroughly opposed to. But I have reviewed the --  
5 as I said, I've reviewed the whole transcript. It did not  
6 look like any of the breaks were related to difficult topics,  
7 pending questions, or otherwise inappropriate times to take a  
8 break.

9           So I'm not finding any further need for an  
10 explanation of what took place during those times. I do  
11 appreciate all of your work. I think I don't have anything  
12 else to say, other than court's in recess.

13           MS. DALE: Your Honor --

14           THE COURT: Can I say that? Court's in recess.

15           MS. DALE: Thank you.

16           MR. GARCIA SOLA: Thank you, Your Honor. Thank you  
17 very much for listening.

18           THE COURT: Thank you.

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1 U.S. DISTRICT COURT )

2 DISTRICT OF PUERTO RICO)

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4 I certify that this transcript consisting of 47 pages is  
5 a true and accurate transcription to the best of my ability of  
6 the proceedings in this case before the Honorable United  
7 States Magistrate Judge Judith Gail Dein on October 28, 2021.

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11 S/ Amy Walker

12 Amy Walker, CSR 3799

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